PREGNANCY DISCRIMINATION

Young v. United Parcel Service, --- U.S. --- (2015)
Decided March 25, 2015

FACTS: Young was a part-time driver for UPS. In 2006, she became pregnant and due to previous miscarriages, had been advised to live no more than 20 pounds during her first 20 weeks, and no more than 10 pounds following that until the baby was delivered. UPS drivers, however, were required to be able to lift parcels of up to 70 pounds, and up to 150 pounds assisted. UPS would not allow her to work with the lifting restriction and as a result, she remained home without pay and without employee medical coverage either.

Young filed suit, claiming that "UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction." She claimed that co-workers were willing to assist her with lifting and more important, that UPS had accommodated other drivers with similar limitations. UPS responded that those "whom it had accommodated were (1) drivers who had become disabled on the job, (2) those who had lost their Department of Transportation (DOT) certifications, and (3) those who suffered from a disability covered by the Americans with Disabilities Act of 1990 (ADA)." Since Young did not fall into any of those categories, it had not discriminated against her, UPS claimed.

The District Court in favor of UPS, and the Fourth Circuit Court of Appeals affirmed. Young requested a petition of certiorari from the U.S. Supreme Court, which granted review.

ISSUE: Must women who need temporary accommodations, such as lifting restrictions, during their pregnancy be treated in the same way as other employees who need such accommodations?

HOLDING: Yes

DISCUSSION: The Court reviewed the history of federal law with respect to pregnancy. Most important, in 1978, Congress passed the Pregnancy Discrimination Act which required that: "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . . ."[1]

The Court noted that this case required a consideration of how a "disparate treatment" claim should be applied – with an assertion that "an employer intentionally treated a complainant less favorably than employees with the "complainant's qualifications" but outside the complainant's protected class."[2] In such cases, the Court agree, liability "depends on whether the protected trait actually motivated the employer's decision."[3] Disparate treatment may be proven "either (1) by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic, or (2) by using the burdenshifting framework set forth in McDonnell Douglas."[4]

In McDonnell Douglas, the Court ruled that the prove "disparate treatment, an individual plaintiff must "carry the initial burden" of "establishing a prima facie case" of discrimination by showing "(i)

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[1] 92 Stat. 2076.
[2] McDonnell Douglas Corp. v. Green, 411 U. S. 792 (1973).
[3] Raytheon Co. v. Hernandez, 540 U. S. 44 (2003).
[4] Trans World Airlines, Inc. v. Thurston, 469 U. S. 111 (1985).

that he belongs to a . . . minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications."

If the subject overcomes that initial hurdle, the employer then has the opportunity ""to articulate some legitimate, nondiscriminatory reason for" treating employees outside the protected class better than employees within the protected class." If the employer is able to do so, the case goes back to the plaintiff to prove "that the legitimate reasons offered by the defendant [i.e., the employer] were not its true reasons, but were a pretext for discrimination."[56]

During discovery, Young argued that several other individuals had received similar accommodations, but most, although not all, involved injuries that occurred on the job. UPS has also provided similar "inside jobs" to drivers who were not able to drive for a variety of non-job-related issues, such as failed DOT tests due to medical issues. According to one shop steward, the light duty requests that "became an issue" involved pregnancies. However, the trial and appellate courts found that UPS's policy was "pregnancy-blind" and thus, on its face, a "neutral and legitimate business practice" with no "animus toward pregnant workers."

The Court noted that certain changes made to federal law, specifically the ADA, following Young's pregnancy, must be considered. In 2008, the ADA's definition of disability was expanded to include "'physical or mental impairment[s] that substantially limi[t]' an individual's ability to lift, stand or bend."[7] As interpreted by the EEOC, employers are required to accommodate employees even if the temporary lifting restriction occurs off the job.[8]

The Court noted that there are several possible ways to interpret the existing law, when a "workplace policy that distinguishes between pregnant and nonpregnant workers in light of characteristics not related to pregnancy. " The Court agreed with UPS that there was no indication that "intended to grant pregnant workers an unconditional most-favored-nation status." The Court noted, however, that the guidance issued in connection with the PDA noted that pregnancy should be treated as "other temporary disabilities" with respect to disability insurance or sick leave.[9] However, the language of the statute does not help when assessing a situation in which "an employer does not treat all nonpregnancy-related disabilities alike." Later EEOC guidance attempted to clarify the ambiguity, stating that:

> … [a]n employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's limitations (e.g., a policy of providing light duty only to workers injured on the job)."[10] As such, the EEOC now states that light duty cannot be denied to a pregnant employee by use of a policy that "limits light duty to employees with on-the-job injuries."

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[5] Texas Dept. of Community Affairs v. Burdine, 450 U. S. 248 (1981).
[6] The court specifically noted this was not a disparate-impact or pattern-or-practice claim.
[7] ADA Amendments Act of 2008, 122 Stat. 3555, codified at 42 U. S. C. §§12102(1)–(2).
[8] 29 CFR pt. 1630, App., §1630.2(j)(1)(ix).
[9] 29 CFR §1604.10(b) (1975).
[10] 2 EEOC Compliance Manual §626–I(A)(5), p. 626:0009 (July 2014).

However, the Court noted, it could not "rely significantly" on the guidance from the EEOC without more information as to how it came to its determination.

The Court concluded that:

> … an individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the McDonnell Douglas framework. That framework requires a plaintiff to make out a prima facie case of discrimination. But it is "not intended to be an inflexible rule."[11] Rather, an individual plaintiff may establish a prima facie case by "showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion illegal under" Title VII. Thus, a plaintiff alleging that the denial of an accommodation constituted disparate treatment under the Pregnancy Discrimination Act's second clause may make out a prima facie case by showing, as in McDonnell Douglas, that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others "similar in their ability or inability to work."

It would then fall to the employer to show a "legitimate, non-discriminatory" reason for the denial of an accommodation. The employee would have the opportunity "in turn [to] show that the employer's proffered reasons are in fact pretextual." Ultimately, it would fall to a jury to decide if the employer's reasons are strong enough to "give rise to an inference of intentional discrimination." For example, if Young can:

> … show that UPS accommodates most nonpregnant employees with lifting limitations while categorically failing to accommodate pregnant employees with lifting limitations. Young might also add that the fact that UPS has multiple policies that accommodate nonpregnant employees with lifting restrictions suggests that its reasons for failing to accommodate pregnant employees with lifting restrictions are not sufficiently strong—to the point that a jury could find that its reasons for failing to accommodate pregnant employees give rise to an inference of intentional discrimination.

The Court noted that an employer's "general policy and practice" could be "evidence of pretext," in such cases, and that "circumstantial proof" can be used to "rebut an employer's apparently legitimate, nondiscriminatory reasons for treating individuals within a protected class differently than those outside the protected class."

In sum, the Court concluded the Fourth Circuit's decision must be vacated. The proof set forth by Young was enough to "create a genuine issue of material facts" under the McDonnell Douglas analysis, with proof of several different light duty accommodations acknowledged, as well as the shop steward's testimony that pregnancy was the only situation when this became an issue. The Court noted, in short, "why, when the employer accommodated so many, could it not accommodate pregnant women as well?"

FULL TEXT OF OPINION: http://www.supremecourt.gov/opinions/14pdf/12-1226_k5fl.pdf

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[11] Furnco Constr. Corp. v. Waters, 438 U. S. 567 (1978).